

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 10.04.2007

Coram

The Honourable Mr. Justice P. SATHASIVAM

and

The Honourable Mr. Justice S. TAMILVANAN

W.A. Nos.1810 to 1816 of 2003

W.A. No.1810 of 2003:-

C. Arivazhagan	 Appellant in WA.No.1810/2003
C. Thangaraj	 Appellant in WA.No.1811/2003
A. Murugan	 Appellant in WA.No.1812/2003
P. Rajendran	 Appellant in WA.No.1813/2003
M. PalaniSwami	 Appellant in WA.No.1814/2003
C. Subramani	 Appellant in WA.No.1815/2003
K. Munuswamy	 Appellant in WA.No.1816/2003

..Vs..

1. The State of Tamil Nadu,
rep. by its Secretary,
Labour and Employment,
Fort St. George,
Chennai - 600 009.
2. The Presiding Officer,
Labour Court,
Salem - 636 007.
3. The Kumarapalayam Municipality,
rep. by its Commissioner,
Kumarapalayam,
Namakkal District - 638 183. Respondents in all the Appeals

For Appellant : Mr. S. Ayyathurai
For Respondents : Mr. P. Subramanian,
Govt. Advocate
(R1 and R3 in all writ appeals)

These Appeals filed under clause 15 of the letters patent against orders of this Court dated 4.02.2002 and made in WP.No.2663/1996, WP No. 2665/1996, WP.No.2664/1996, WP.No.2666/1996, WP.No.2667/1996, WP.No.2668/1996, and WP.No.2669/96 respectively.

These writ petitions presented to this Court under Article 226 of the constitution of India to issue a writ of certiorari to call for the records of the Labour Court Salem Award dated 08.12.1995 and made in ID.Nos.46 to 52/1995 respectively and the letter of the 1st respondent dated 09.2.1996 in Lr.No.3179/C2/95-1 and quash the same.

JUDGMENT

(Judgment was delivered by P. SATHASIVAM, J.)

Aggrieved by the common order of the learned Single Judge dated 4.2.2002 passed in W.P. Nos.2663 to 2669 of 1996, the workmen/ respondents therein filed the above writ appeals. Since the grievance expressed and relief prayed for are one and the same, all these matters can be disposed of identically by the following common order.

2. According to the workmen/appellants herein, they had been continuously working in the Municipality right from the year 1989 and they were terminated from service with effect from 2.7.1994. When their rights were disputed before the Labour Court, objection was raised by the Municipality, contending that the employees are Government servants and the provisions of the Industrial Disputes Act are not applicable to them. The Labour Court, Salem, after rejecting the objection of the Municipality as to the maintainability and after considering the claim of the workmen, agreeing with their case on merits, passed common award dated 8.12.1995 and directed reinstatement of all the workmen with backwages. The said common award was under challenge by the Municipality in the aforesaid writ petitions.

3. Learned Judge, by an order dated 4.2.2002, after finding that unless and until the question viz. whether Kumarapalayam Municipality is an industry or not is finally determined, no award could be passed as ordered by the Labour Court, remanded the matter to the Labour Court, Salem to decide as to whether the writ petitioner-Municipality is an "Industry" as defined under Section 2(j) of the Industrial Disputes Act or not and thereafter proceed on merits. With the said direction, the learned Judge allowed all the writ petitions filed by the Municipality. Questioning the said order, the workmen filed individual appeals.

4. Heard Mr. Ayyathurai, learned counsel appearing for the appellants-workmen and the learned Government Advocate appearing for the contesting third respondent-Kumarapalayam Municipality.

5. Learned counsel appearing for the appellants-workmen submitted that in view of the factual details available and also of the fact that the very same Municipality suffered similar award dated 22.10.2003 in I.D. No.301 of 1998 and the same had been implemented by the Municipality, the order of the learned Judge, remitting the same to the

Labour Court to consider the maintainability is not warranted.

6. On the averments, let us consider the common award of the Labour Court dated 8.12.1995 made in I.D. Nos.46 to 52 of 1995. After narrating the pleadings of both the parties and the objection of the Municipality, the Labour Court, after referring to the decision of the Apex Court reported in the case of BANGALORE WATER SUPPLY AND SEWERAGE BOARD v. RAJAPPAN (1978 (1) L.L.J. 349) and finding that all the three conditions mentioned in the said decision are applicable to the Municipality, arrived at a conclusion that the dispute raised is maintainable and the Labour Court has jurisdiction to go into the claim of the workmen. In paragraph 7, the Labour Court has referred to the decision of the Supreme Court. As per the said decision, three tests propounded are as follows:-

- "(i) systematic activity;
- (ii) co-operation between employer and employee and
- (iii) production and/or distribution of goods and services circulated to satisfy human wants and wishes."

No doubt, after adverting all those conditions, the Labour Court has not discussed about the factual details as stated in their petition. However,, it cannot be construed that the Labour Court has not applied its mind with reference to those conditions and the relevant materials/particulars furnished in the petition filed by the workmen.

7. In addition to the same, learned counsel appearing for the appellant pressed into service the earlier proceedings between the workmen and the very same Municipality in I.D. No.301 of 1998. The said dispute was raised for regularization of the employees numbering 55 in Kumarapalayam Municipality. Objections were raised by the Municipality, by filing counter and additional counter statements. On the side of the Union, P.Ws.1 and 2 were examined and on the side of the Municipality, M.Ws.1 and 2 were examined. After analysing the materials placed by both sides, the Labour Court, by award dated 22.10.2003, directed the Municipality to regularize 35 workmen.

8. It is relevant to point out that the very same Municipality filed W.P. No.7537 of 1998, questioning the order of reference of the Government of Tamil Nadu in G.O. Ms.No.265, Labour and Employment Department dated 6.4.1998 and also prayed direction to the Labour Court not to proceed with I.D. No. 301 of 1998. When the said writ petition came up for hearing on 6.12.2006 before the learned Single Judge, it was represented by the learned counsel appearing on both sides that the petitioner-Municipality has regularized the services of the casual

employees and in view of the same, no further adjudication was required. The learned Judge, after recording the said submissions, found that there is nothing survives in the writ petition and dismissed the said writ petition.

9. It is clear from the above details that the award passed in I.D. No.301 of 1998 on the file of the Labour Court, Salem has been implemented. Learned counsel appearing for the appellant also brought to our notice that all the appellants are parties in I.D. No.301 of 1998 (Sl.Nos.5, 6, 7, 10, 15, 16 and 24). In view of the same, we are of the view that there is no need to go into the question viz. whether the Municipality is an industry or not once again, as ordered by the learned Judge. Accordingly, we set aside the said direction.

10. Coming to the merits of the award of the Labour Court, the Labour Court, based on the specific assertion in the claim petition as well as the documents produced by either side, has concluded that some of the workmen have worked for more than eight/five years. The Labour Court also concluded that in the absence of any charge memo or acceptable reason, the action taken by the Municipality to remove all these persons is not acceptable and against the law. The Labour Court has also concluded that the Municipality has not followed the conditions prescribed in the Industrial Disputes Act, before removing all the persons from service. It is also seen from the award of the Labour Court that the Management victimized these persons on the main ground that there were members of the trade union. The Labour Court, after finding that these persons were in service nearly eight/five years and there is no specific charge against them and of the fact that the Municipality failed to follow the provisions of the Industrial Disputes Act, came to a conclusion that the action taken by the Municipality in dismissing all the seven persons is against law and opposed to the provisions of the Industrial Disputes Act and granted the relief of reinstatement with backwages.

11. Inasmuch as the said conclusion was arrived based on acceptable oral and documentary evidence, in the absence of acceptable contra evidence on the side of the Municipality we are of the view that there cannot be any interference, exercising jurisdiction under Article 226 of the Constitution of India. On the other hand, from the materials placed before the Labour Court, we are satisfied that the Labour Court is fully justified in passing the impugned award. We are also satisfied that there is no valid ground to interfere with the well considered award of the Labour Court.

12. Though the Labour Court has passed an award for reinstatement with backwages, considering the fact that all the appellants did not work all along in the Municipality viz. during the pendency of the above proceedings and also of the fact that they were being paid wages under Section 17B of the Industrial Disputes Act for the last four years, we are not confirming the relief of backwages. In other words, all the appellants-workmen are to be reinstated with all service benefits without

backwages within a period of four weeks from the date of receipt of copy of this order.

13. It is brought to our notice that during the pendency of the above appeals, on the orders of this Court, the Municipality had deposited some amount to the credit of the proceedings and the same are lying in the Labour Court, Salem. If it is so, the appellants-workmen are permitted to withdraw the same on production of copy of this order.

14. The writ appeals are allowed to the extent mentioned above.
No costs.

ssa.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Secretary to Government
Labour and Employment,
Fort St. George, Chennai-9.
2. The presiding officer,
Labour Court, Salem.
3. The Commissioner
kumarapalayam Municipality,
komarapalayam, Namakkal District

+6 ccs to Mr.S.Ayyathurai, Advocate Sr.Nos.22626 to22631.

+1 cc to Mr.P.Subramani, Advocate Sr.No.22701.

+1 cc to Mr.S.Ayyathurai, Advocate sr.No.22619.

MBS (CO)
dcp/19.4.07

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